

Execution Copy

SECOND AMENDMENT
TO THE
SERVICE CONTRACT FOR WASTEWATER TREATMENT SYSTEM
CAPITAL IMPROVEMENTS AND ASSET MANAGEMENT

among

THE BOROUGH OF NAUGATUCK, CONNECTICUT

and

THE WATER POLLUTION CONTROL AUTHORITY
OF THE BOROUGH OF NAUGATUCK

and

U.S. FILTER OPERATING SERVICES, INC.

Dated as of

March 28, 2003

SECOND AMENDMENT
TO THE
SERVICE CONTRACT FOR WASTEWATER TREATMENT SYSTEM
CAPITAL IMPROVEMENTS AND ASSET MANAGEMENT

This SECOND AMENDMENT TO THE SERVICE CONTRACT FOR WASTEWATER TREATMENT SYSTEM CAPITAL IMPROVEMENTS AND ASSET MANAGEMENT is made and dated as of March 28, 2003 among the Borough of Naugatuck, Connecticut, a political subdivision organized and existing under the laws of the State of Connecticut, the Water Pollution Control Authority of the Borough of Naugatuck, a water pollution control authority established by the Borough of Naugatuck pursuant to Chapter 103 of the Connecticut General Statutes (the "WPCA"; the WPCA and the Borough of Naugatuck, Connecticut are collectively referred to herein as the "Borough") and U.S. Filter Operating Services, Inc., a corporation organized and existing under the laws of the State of Delaware and authorized to do business in the State of Connecticut (the "Company").

RECITALS

WHEREAS, the Borough and the Company have heretofore executed an Service Contract for Wastewater Treatment System Capital Improvements and Asset Management dated October 25, 2001, as amended by a certain First Amendment to the Service Contract for Wastewater Treatment System Capital Improvements and Asset Management dated June 4, 2002 (as amended, the "Service Contract"; capitalized terms used but not defined herein are as defined for purposes of the Service Contract); and

WHEREAS, the Company has heretofore proposed certain reductions in the scope of the ICI Design/Build Work required under the Service Contract and commensurate reductions in the Fixed Design/Build Price and Service Fee with respect thereto;

WHEREAS, following the review of such proposed changes by the Borough Engineer, the Borough has determined to accept the Company's proposal as set forth herein;

WHEREAS, in connection with Management Services pertaining to the Collection System, the Borough is purchasing a vacuum truck for the exclusive use of the Company in performing such Collection System services; and

WHEREAS, the parties have determined based on the foregoing that certain provisions of the Service Contract should be clarified or modified;

NOW, THEREFORE, the parties hereto agree as follows:

Section 1. Amendment of the Service Contract. Each of the following sections of the Service Contract is hereby amended, in relevant part, as set forth below; in each case, language to be deleted from the provision is stricken out and language to be added thereto is double underscored:

(a) Amendment of Item (k) of the "Inclusions" in the Definition of "Uncontrollable Circumstances" in Section 1.1 of the Service Contract. Item (k) of the "Inclusions" in the Definition of "Uncontrollable Circumstances" in Section 1.1 of the Service Contract to be deleted in its entirety.

(b) Amendment of Item (9) of Section 5.3 of the Service Contract. Item (9) of Section 5.3 of the Service Contract to read, in its entirety, as follows:

(9) Provide access to ~~the~~ a Borough-owned vacuum truck as provided in ~~Section 7.2~~ subsection 7.2(F);

(c) Amendment of Subsection 7.2(A) of the Service Contract. Subsection 7.2(A) of the Service Contract to read, in its entirety, as follows:

(A) Inspections, Cleaning and Blockage Removal. Commencing on January 1, 2003, the Company shall, as part of the Collection System Fee, perform the following work with respect to the Collection System:

(1) the Company shall conduct scheduled inspections on a routine basis of the force main and Pump Station components of the Collection System to maintain their continuous operability in accordance with the procedures set forth in Appendix 14;

(2) the Company shall conduct routine and emergency cleaning of the Collection System in accordance with Contract Standards;

(3) the Company shall conduct inspections of the Collection System mains in accordance with an inspection plan developed by the Company and approved by the Borough as provided in Appendix 14;

(4) within one hour of observation or receipt of notice by the Company of a blockage in the Collection System that is causing a Back-Up, the Company shall take prompt action to remove such blockage as provided in Appendix 14; and

(5) within a reasonable time after observation or receipt of notice by the Company of a partial blockage in the Collection System that is significantly restricting the use or function of any component of the Collection System, the Company shall take action to remove such blockage.

~~The Borough shall make available to the Company on an "as-needed" basis the Borough's vacuum truck for its use in performing the Collection System services hereunder. The Borough shall make the Borough's vacuum truck available to the Company promptly upon request (no later than one hour) in the event of notice received by the Company of a blockage, partial blockage, Back-Up or other emergency, and shall otherwise make the vacuum truck available within a reasonable time (no later than one day) following request by the Company in order to perform other services relating to the Collection System.~~

(d) Addition of Subsection 7.2(F) of the Service Contract. New Subsection 7.2(F) of the Service Contract to read, in its entirety, as follows:

(F) Borough Vacuum Truck. As provided in Section 5.3, the Borough has agreed to provide access to a Borough-owned vacuum truck for use by the Company in performing the Collection System services under subsection (A) of this Section. For purposes of this Section and such Section 5.3, the following provisions shall govern the Borough's provision and the Company's use of such vacuum truck:

(1) Exclusive Use of Borough Vacuum Truck. If the Borough has arranged for a vacuum truck to be used exclusively by the Company in performing the Collection System services under subsection (A) of this Section, such vacuum truck shall be deemed to constitute a part of the Managed Assets; provided that, in lieu of any other provisions in the Service Contract relating to the maintenance, repair and replacement of the Managed Assets or the condition of the Managed Assets upon termination or expiration of the Term of this Service Contract, the following provisions shall apply:

(a) Borough Responsibilities. The Borough, at all times during the Term hereof, shall be responsible for (i) obtaining and maintaining all insurance required under any lease-purchase agreement for the vacuum truck, and (after the terms of such lease-purchase agreement are no longer applicable), automobile coverage in an amount equivalent to that maintained by the Borough for vehicles of a similar nature, (ii) paying all maintenance and repair costs for the vacuum truck as and to the extent provided in paragraph (3) below, and (iii) replacing the vacuum truck if determined by the Borough, in its sole discretion.

(b) Company Responsibilities. The Company, at all times during the Term hereof, shall be responsible for (i) complying with and performing on behalf of the Borough the Borough's covenants relating to the use, operation and maintenance of the vacuum truck set forth in any lease-purchase agreement therefor, and (ii) otherwise maintaining and repairing the vacuum truck, in each case as and to the extent provided in paragraph (3) below. The parties shall designate through a Contract Administration Memorandum those provisions of any lease-purchase agreement for which the Company is responsible under item (i) above. The Company shall further use reasonable efforts to use the vacuum truck provided hereunder at a minimum of 150 days in each Contract Year. The Company shall prepare as part of the annual operations and maintenance reports required by subsection 5.15(B) a summary of the annual usage of and maintenance and repair work for the vacuum truck. The annual summary shall include: miles driven; list of maintenance and repair work performed on the truck; and engine hours (hours utilized).

(c) No Assignment by Borough. The parties acknowledge that the Company's right to use the vacuum truck hereunder is not the result of the Borough's having assigned its right, title and interest in the vacuum truck pursuant to the above-referenced lease-purchase agreement.

The unavailability of the vacuum truck under this paragraph for any reason (including the Borough's failure to replace the vacuum truck), other than Company Fault and regularly-scheduled maintenance and repair work, shall constitute an Uncontrollable Circumstance until such time as the Borough has provided the Company with access to and use of a replacement vacuum truck in accordance with this subsection.

(2) Shared Use of Borough Vacuum Truck. If the Borough has not arranged for the Company's exclusive use of a Borough-owned vacuum truck as provided in the preceding paragraph, the Borough shall make available to the Company on an "as-needed" basis the Borough's vacuum truck, which is used by the Borough's workforce, for the Company's use in performing the Collection System services under subsection (A) of this Section. The Borough shall make the Borough's vacuum truck available to the Company promptly upon request (no later than one hour) in the event of notice received by the Company of a blockage, partial blockage, Back-Up or other emergency, and shall otherwise make the vacuum truck available within a reasonable time (no later than one day) following request by the Company in order to perform other services relating to the Collection System. The failure of the Borough to provide the Company with prompt access to the Borough's vacuum truck under this paragraph shall constitute an Uncontrollable Circumstance, unless the truck is unavailable due to Company Fault. Prior to effectuating any shared use of the vacuum truck under this paragraph, the parties shall agree upon a protocol for the maintenance and repair of the vacuum truck, which protocol shall be evidenced by a Contract Administration Memorandum.

(3) Maintenance and Repair of the Vacuum Truck. Subject to the limits in this paragraph, the Company shall provide for the maintenance and repair of the vacuum truck in accordance with Prudent Industry Practice, the manufacturer's recommendations so as to fully maintain in effect any applicable manufacturer's or extended warranties and preserve the vehicle's useful life and as provided herein. The Company shall be responsible for all maintenance and repair costs for the vacuum truck, not otherwise covered by a manufacturer's warranty, up to an annual aggregate limit of \$2,000 for the Contract Year ending June 30, 2003 and an annual aggregate limit for each Contract Year thereafter of \$8,000 (as adjusted annually by the Adjustment Factor commencing in the Contract Year beginning July 1, 2003). If any maintenance or repair work that is required in any Contract Year involves costs in excess of the applicable limit, then the Borough shall pay any costs in excess thereof, subject to Cost Substantiation. The Company shall be solely responsible for all maintenance and repair

costs, regardless of the costs thereof, if such maintenance or repair is due to Company Fault. In determining the costs for any maintenance and repair for purposes of this Section, the Company may include the direct and actual costs related to the purchase of an extended maintenance warranty, and to parts, fluids (other than fuel, oil or other fluids used to top-off between maintenance events), supplies and third-party contractors used in connection with such maintenance or repair work. The Company shall not include the costs of fuel, fluid top-offs, routine greasing and lubrication of parts, minor adjustments of equipment or any if its employees assigned to the Managed Assets and the Collection System in determining the costs of any maintenance or repair work. The Company shall give the Borough reasonable advance notice of any maintenance or repair work expected to exceed the limits set forth in this paragraph.

(e) Amendment of Subsection 9.5(C) of the Service Contract. Subsection 9.5(C) of the Service Contract to read, in its entirety, as follows:

(C) Fixed ICI Design/Build Price. ~~Subject to Section 4.5, †~~ The Fixed ICI Design/Build Price is an amount equal to \$2,248,393, which amount reflects the application of adjustment required by Section 4.5(C) as of the Commencement Date. The parties acknowledge that the foregoing amount reflects a reduction in the scope of ICI Design/Build Work relating to certain odor control improvements and general upgrades at the Plant from that required to be designed and constructed by the Company as of the Commencement Date. The parties further acknowledge that the agreement to reduce the aforementioned odor control improvements is based on the parties' expectations that Crompton has or will have permanently discontinued its wastewater discharges to the third primary settling tank at the Plant. The Company hereby confirms that, notwithstanding these reductions in the ICI Design/Build Work, it shall continue to comply with the Performance Guarantees, including the odor guarantee specified in Section 6.3; provided, however, that in the event Crompton or another industry occupying the Crompton property exercises its right to continue wastewater discharges to the third primary settling tank and such discharges result in an odor problem, the Company shall have the right to request relief from the odor guarantee set forth in Section 6.3. In such event, the parties shall promptly arrange to meet and negotiate in good faith to reach mutual agreement regarding the scope, cost and other particulars relating to the appropriate capital improvements, operation and management practices changes or any other actions necessary in order for the Company to comply with such odor guarantee. (1) \$2,165,835 multiplied by (2) a fraction, the denominator of which is the Consumer Price Index for the month of August, 2001, and the numerator of which is the Consumer Price Index for the month in which the Financing Commitment Date occurs; provided, however, that the Consumer Price Index for the month in which the Financing Commitment Date occurs shall be prorated such that the Fixed ICI Design/Build Price escalates only through such date and not through such entire month.

(f) Amendment of Footnote to Element A in Subsection 12.4(B) of the Service Contract. Footnote to Element A in Subsection 12.4(B) of the Service Contract to read, in its entirety, as follows:

* Element A for any subsequent Contract Year shall be determined by multiplying (a) Element A for the previous Contract Year, times (b) the Adjustment Factor. Element A of the Fixed Component shall be subject to further adjustment in any Contract Year in which the Incineration Facilities are indefinitely or permanently shutdown as provided in Section 8.2. Effective on August 15, 2007, Element A of the Fixed Component applicable for the Contract Year ending on June 30, 2008 shall be subject to a one-time reduction in the amount of \$2,623.88, which amount reflects March 2003 prices (as adjusted each Contract Year by the Adjustment Factor commencing on July 1, 2004 and thereafter through July 1, 2007). Effective on July 1, 2008, Element A of the Fixed Component shall be subject to a one-time permanent reduction in the amount of \$3,002.25, which amount reflects March 2003 prices (as adjusted each Contract Year by the Adjustment Factor commencing on July 1, 2004 and thereafter through July 1, 2008).

(g) Amendment of Section 12.6 of the Service Contract. Section 12.6 of the Service Contract to read, in its entirety, as follows:

SECTION 12.6. EXTRAORDINARY ITEMS CHARGE OR CREDIT. (A) Extraordinary Items. The Extraordinary Items component of the Service Fee, which may be a charge or a credit, shall be equal to the sum of (1) the amounts payable by the Borough for increased operation, maintenance or other costs incurred on account of the occurrence of an Upset, Interference or Pass-Through, the receipt of Excessive Influent, or the occurrence of other Uncontrollable Circumstances which are chargeable to the Borough hereunder, net of any operation and maintenance cost savings achieved by the Company in mitigating the effects of the occurrence of such an Uncontrollable Circumstance, plus (2) the adjustments to the Service Fee for increased or reduced operation and maintenance costs resulting from any Capital Modifications the costs of which are payable by the Borough, or the benefits of which accrue to the Borough, under the provisions of this Service Contract, plus (3) any liquidated damages resulting from Company non-performance as specifically provided for under Article VI or any other provision hereof, plus (4) Service Fee adjustment provided for in Section 6.5 with respect to Hazardous System Residuals, plus (5) any other increase or reduction in the Service Fee provided for under any other Article or Section of this Service Contract including Section 5.18.

(B) Treatment of Extraordinary Items Component. For purposes of compliance with Section 12.11, upon the occurrence of any event giving rise to an Extraordinary Item and in advance of the payment of any such Extraordinary Item, the Borough and the Company agree to treat and designate (through a Contract Administration Memorandum) the particular Extraordinary Item in one of the following ways:

(1) an ongoing adjustment to the Fixed Component of the Base Fee in a stated dollar amount to be effective in a specified Contract Year;

(2) a one-time adjustment to the Fixed Component of the Base Fee in a stated dollar amount to apply for a specified Contract Year;

(3) an amount in the nature of actual and direct expenses (without markup for profit, administration or otherwise) paid by the Company to unrelated third parties in connection with the Extraordinary Item;

(4) an amount to be paid to the Company either on a one-time basis or on an ongoing basis which will be deemed to be added to and included within the Variable Component of the Base Fee in one or more specified Contract Years, notwithstanding the absence of specification of the Extraordinary Item as part of the Variable Component in Section 12.4(C);

(5) an amount resulting from a Capital Modification either directed by the Borough or caused by an Uncontrollable Circumstance that is in the nature of a capital expenditure for acquisition, construction, improving or equipping of the Initial Capital Improvements as contrasted with a payment in the nature of compensation for services in managing or operating the Managed Assets; or

(6) an amount in the nature of liquidated damages, indemnification payments or other payments of a similar, but specifically described, nature.

(h) Addition of Subsection 12.11(C) of the Service Contract. New Subsection 12.11(C) the Service Contract to read, in its entirety, as follows:

(C) Retesting. If, at any time or from time to time, during the Management Period, (1) the scope of the Management Services is increased or reduced pursuant to the terms of this Service Contract and (2) there is an adjustment to the Fixed Component of the Base Fee due to such increase or reduction in the Management Services, the parties shall retest, as of the date of such adjustment, the Service Fee for compliance with Rev. Proc. 97-13 and the requirements of this Section. Any such adjustment of the Fixed Component and retesting of the Service Fee shall, at the Borough's costs, be subject to the review and approval of nationally-recognized public contract and finance counsel for confirmation that such adjustment will not adversely affect the tax-exempt status of any obligations issued by the Borough with respect to the Managed Assets or the Collection System.

(i) Amendment of Section 4.0 of Appendix 2 to the Service Contract. Section 4.0 of Appendix 2 to the Service Contract to be deleted in its entirety.

(j) Amendment of Section 5.0 of Appendix 2 to the Service Contract. Section 5.0 of Appendix 2 to the Service Contract to read, in its entirety, as follows:

5.0 WWTP GENERAL UPGRADES

The Company shall be responsible for making all general Plant upgrades required for compliance with Applicable Law. WWTP improvements to be completed by the Company include but are not limited to:

- ~~The installation of toe plates on the railing system around the aeration tanks;~~
- ~~The installation of hand railing around the top of the sludge thickener tanks;~~
- The installation of hand railing on the elevated walkway on the west side of the aeration tanks adjacent to the parking lot; and
- ~~Repair/replacement of the stairs from the primary clarifiers to address inadequate step spacing.~~

(k) Amendment of Section 3.0 of Appendix 6 to the Service Contract. Section 3.0 of Appendix 6 to the Service Contract to be deleted in its entirety.

(l) Amendment of Table 6-4-1 in Section 4.0 of Appendix 6 to the Service Contract. Table 6-4-1 in Section 4.0 of Appendix 6 to the Service Contract to read, in its entirety, as set forth in Attachment A to this Second Amendment.

(m) Amendment of Section 1.7 of Appendix 10 to the Service Contract. Section 1.7 of Appendix 10 to the Service Contract to read, in its entirety, as follows:

1.7 Deductibles

The following deductibles shall be applicable to the Required Leasehold Period Insurance and shall be paid by the Lessee:

~~Commercial General Liability - \$250,000.~~

Automobile - ~~\$250,000~~ \$500,000 per occurrence.

Umbrella - \$10,000 self insured retention, if not covered by the underlayer of insurance.

Contractors Pollution Liability - \$250,000 each incident.

~~Railroad - part of CGL (\$250,000).~~

Effective as of March 1, 2003, the self-insured retention (SIR) for Commercial General Liability is \$2,000,000.

Any ~~changes~~ increases to the foregoing deductibles or SIRs shall be agreed upon by the Lessee and the Lessor.

(n) Addition of Section 1.2.3 of Appendix 14 to the Service Contract. New Section 1.2.3 of Appendix 14 to the Service Contract to read, in its entirety, as follows:

1.2.3 Operation and Maintenance of Borough-Owned Vacuum Truck Provided for Company's Exclusive Use

The Company shall be responsible for garaging and for operating, servicing and maintaining a vacuum truck which is to be provided by the Borough for Company exclusive use in performing the Management Services pertaining to the Collection System in accordance with Section 7.2(F) of the Service Contract. The Company shall use the vacuum truck solely in the Borough for purposes of providing the services described in Section 7.2(A) of the Service Contract and Sections 1.2.1 and 1.2.2 of this Appendix, and shall operate and maintain the vacuum truck in accordance with Prudent Industry Practice, the manufacturer's recommendations so as to fully maintain in effect any applicable manufacturer's or extended warranties and preserve the vehicle's useful life and to the extent provided in Section 7.2(F) of the Service Contract.

The truck shall be identified with a sign as agreed to by the parties.

The Company shall prepare as part of the annual operations and maintenance reports required by Section 5.15(B) of the Service Contract a summary of the annual usage of the truck. The annual summary is to include the following information: miles driven; list of maintenance activities performed on the truck; and engine hours (hours utilized).

(o) Amendment of Section 8.0 of Appendix 14 to the Service Contract.
Section 8.0 of Appendix 14 to the Service Contract to read, in its entirety, as follows:

8.0 OSHA COMPLIANCE

The Company shall prepare and implement a technical and safety training plan and program for the Managed Assets in accordance with OSHA requirements, Prudent Industry Practice and the Company standard practices, whichever are most stringent. The Company shall assign the administration of the technical and safety training plan and program to its appropriate staff.

Safety meetings shall be held regularly. Said meetings shall be used to provide safety training and to review site-specific job and general safety requirements.

Inspections by the Company's personnel responsible to health and safety shall be used as a tool in determining how the health and safety program is progressing in conformance with the established plan. Should an accident occur, a written accident investigation procedure shall be followed to document the accident and prevent re-occurrences.

The Company shall prepare and comply with a Standard Operating Procedure for the installation and use of temporary toe plates at all tank railings whenever workers are working in dewatered process tanks.

The Company shall prepare and post a caution sign at the "ship's ladder" located at the north wall of the primary settling tanks. The caution sign is to read as follows:

CAUTION: This ladder is to be used only to access the primary skimmings sump and is not to be used as a route of casual passage to the primary settling tanks.

(p) Amendment of Appendix 21 to the Service Contract. Appendix 21 to the Service Contract, to read, in its entirety, as set forth in Attachment B to this Second Amendment.

Section 2. Entire Agreement. This Second Amendment, and the Service Contract, to the extent not modified hereby, set forth the entire understanding of the parties hereto with respect to the subject matter hereof and supercedes all prior understandings and communications, whether written or oral with respect to such subject matter.

Section 3. Severability. The invalidity or inability to enforce any provision of this Second Amendment will not affect the other provisions, and this Second Amendment will be construed in all respects to the extent possible to fulfill the purposes of this Second Amendment as if such invalid or unenforceable provision were omitted. To the extent any provision of this Second Amendment is held to be invalid or unenforceable, the parties agree to negotiate in good faith in an effort to adopt revised provisions designed to reflect the original intention of the parties and the purposes of the Second Amendment.

Section 4. Singular and Plural. Singular words shall connote the plural as well as the singular, and vice versa (except as indicated), as may be appropriate.

Section 5. References; Headings. Unless otherwise indicated, references within this Second Amendment to articles, sections or subsections are references to articles, sections or subsections in or to the Service Contract. The headings preceding the text of the articles, sections or subsections of this Second Amendment shall be solely for convenience of reference and shall not affect its meaning, construction or effect.

Section 6. Successors. This Second Amendment shall be binding upon and inure to the benefit of, the Borough and the Company, and their respective successors and permitted assigns.

Section 7. Third Party Beneficiaries. The provisions of this Second Amendment are solely for the benefit of the Borough and the Company and nothing in this Second Amendment shall be construed to give any other person any legal or equitable right, remedy or claim under or in respect of this Second Amendment or any provision contained herein.

Section 8. Governing Law. This Second Amendment shall be interpreted and construed in accordance with the applicable laws of the State.

Section 9. Counterparts; Effective Date. This Second Amendment may be executed in any number of original counterparts. All such counterparts shall constitute but one and the same instrument. This Second Amendment shall be immediately effective upon the completed execution hereof.

IN WITNESS WHEREOF, the parties have caused this Second Amendment to be executed and delivered by their duly authorized officers or representatives as of the date first above written.

THE BOROUGH OF NAUGATUCK, CONNECTICUT

ATTEST:

By: _____
Joan B. Taf
Mayor

THE WATER POLLUTION CONTROL AUTHORITY
OF THE BOROUGH OF NAUGATUCK

ATTEST:

By: _____
Ronald Merancy
Chairman

U.S. FILTER OPERATING SERVICES, INC.

ATTEST:

By: _____
Joseph Burgess
Vice President and General Manager
Northeast Business Center

Attachment A to the Second Amendment

4.0 WWTP GENERAL UPGRADES

Table 6-4-1
Commencement Date Work

Milestone Description	Projected Number of Days from Commencement Date	Drawdown Percentage of Fixed ICI Design/Build Price	Cumulative Drawdown Percentage of Fixed ICI Design/Build Price	Maximum Dollar Drawdown of Fixed ICI Design/Build Price	Maximum Cumulative Dollar Drawdown of Fixed ICI Design/Build Price
Place General Contractor On Site	240	30	30	25,304	25,304
Materials to Site	270	20	50	16,995	42,295
Substantial Completion <u>of the Installation of Handrailing on the Elevated Walkway on the West Side of the Aeration Tanks Adjacent to the Parking Lot</u>	450	45 <u>89</u>	45 <u>89</u>	37,760	80,055 <u>37,760</u>
ICI Acceptance	570	5 <u>11</u>	100	4,535	84,594 <u>42,295</u>
Total		100		84,594 <u>42,295</u>	

Attachment B to the Second Amendment

APPENDIX 21

EXAMPLE SERVICE FEE AND OTHER PAYMENT CALCULATIONS

TABLE OF CONTENTS

1.0	Service Fee Calculations	1
2.0	Collection System Fee Calculations	7

APPENDIX 21

EXAMPLE SERVICE FEE AND OTHER PAYMENT CALCULATIONS

1.0 SERVICE FEE CALCULATIONS

The Service Fee shall be calculated pursuant to Article XII of the Service Contract and in accordance with the following formula.

1.1 Service Fee Formula

$$\text{ASF} = \text{BF} + \text{RCC} \pm \text{EI}$$

Where,

ASF	=	Annual Service Fee
BF	=	Base Fee
RCC	=	Reimbursable Costs Charge
EI	=	Extraordinary Items

The Base Fee shall be calculated in accordance with the following formula:

$$\begin{aligned}\text{BF} &= \text{FC} + \text{VC} \\ \text{VC} &= \text{FLAE} + \text{NRE}\end{aligned}$$

Where,

BF	=	Base Fee
FC	=	Fixed Component
VC	=	Variable Component
FLAE	=	Flows and Loadings Adjustment Element
NRE	=	Nitrogen Removal Element

For purposes of the example calculations provided in this Appendix 21 and for purposes of the Federal tax compliance provision regarding the management contract safe harbors against private business use of Internal Revenue Service Revenue Procedure 97-13 ("Rev. Proc. 97-13") in Section 12.11 of the Service Contract, it is assumed that the Reimbursable Costs Charge, if incurred by the Company in any Contract Year and subject to reimbursement by the Borough, would not be deemed under Rev. Proc. 97-13 to be "compensation for services" to the Company and, therefore, would not be included in annual calculation of the Company's total compensation for compliance with Rev. Proc. 97-13.

Further, for purposes of the Federal tax compliance provision regarding the management contract safe harbors against private business use of Rev. Proc. 97-13 in Section 12.11 of the Service Contract, upon the occurrence of any event giving rise to an Extraordinary Item and in advance of the payment or credit of any such Extraordinary Item pursuant to Section 12.6 of the Service Contract, the parties will treat and designate the particular Extraordinary Item in one of the following ways: (1) an ongoing adjustment to the Fixed Component of the Base Fee in a stated dollar amount to become effective in a specified Contract Year; (2) a one-time adjustment

WWTP Service Contract
Example Service Fee and Other Payment Calculations

Appendix 21

March 28, 2003 (Second Amendment Copy)
1201

to the Fixed Component of the Base Fee in a stated dollar amount to apply for a specified Contract Year; (3) an amount in the nature of actual and direct expenses (without markup for profit, administration, or otherwise) paid by the Company to unrelated third parties in connection with the Extraordinary Item; (4) an amount to be paid to the Company either on a one-time basis or an ongoing basis which will be deemed to be added to and included within the Variable Component of the Base Fee in one or more specified Contract Years, notwithstanding the absence of specification of the Extraordinary Item as part of the Variable Component in Section 12.4(C) of the Service Contract; (5) an amount resulting from a Capital Modification either directed by the Borough or caused by an Uncontrollable Circumstance that is in the nature of a capital expenditure for acquisition, construction, improving, or equipping of the Managed Assets as contrasted with a payment in the nature of compensation for services in managing or operating the Managed Assets; or (6) an amount in the nature of liquidated damages or a payment of a similar, but specifically described, nature.

Pursuant to subsection 12.4(B) of the Service Contract, effective on August 15, 2007, Element A of the Fixed Component applicable for the Contract Year ending on June 30, 2008 shall be subject to a one-time reduction in the amount of \$2,623.88, which amount reflects March 2003 prices (as adjusted each Contract Year by the Adjustment Factor commencing on July 1, 2004 and thereafter through July 1, 2007). Effective on July 1, 2008, Element A of the Fixed Component shall be subject to a one-time permanent reduction in the amount of \$3,002.25, which amount reflects March 2003 prices (as adjusted each Contract Year by the Adjustment Factor commencing on July 1, 2004 and thereafter through July 1, 2008). For the purposes of this Appendix 21 only, each of the foregoing amounts is defined as the "Reduction Amount" or "RA". The following calculations, in the order presented, illustrate the manner in which the application of Reduction Amount shall be effectuated.

Calculation 1: The Reduction Amount shall be adjusted for each Contract Year by the appropriate Adjustment Factor for each such Contract Year, commencing on July 1, 2004.

Calculation 2: Element A of the Fixed Component for Contract Year 5 shall be adjusted by the Adjustment Factor applicable to Contract Year 6.

Calculation 3: The Reduction Amount for Contract Year 5 (which shall have been determined through the calculations performed under Calculation 1, above) shall be adjusted by the Adjustment Factor applicable to Contract Year 6.

Calculation 4: The amount resulting from Calculation 3 shall be multiplied by eighty eight percent (.88).

Calculation 5: The amount resulting from Calculation 4 shall be subtracted from the amount determined in Calculation 2. The amount resulting from this subtraction shall be deemed to be Element A of the Fixed Component for Contract Year 6.

Calculation 6: The amounts determined in Calculation 2 and Calculation 3 shall be added together. The amount resulting from this addition shall be the basis on which Element A of the Fixed Component for Contract Year 7 shall be determined. The amount subsequently determined as Element A of the Fixed Component for Contract Year 7 shall be the basis for the

determination of Element A for all succeeding Contract Years, and no further reduction of the type provided for in subsection 12.4(B) of the Service Contract shall apply.

Assumptions, Inputs and Supporting Calculations

Assume $RA_{YR5} = \$3,379.06$

Assume Element $A_{YR5} = \$2,500,000$

Assume $AF_{YR5} = 1.03$

Element A_{YR6} (before reduction) = (Element A_{YR5}) \times (AF_{YR6}) = $(\$2,500,000)\times(1.03) = \$2,575,000$

RA_{YR6} (before proration) = (RA_{YR5}) \times (AF_{YR6}) = $(\$3,379.06)\times(1.03) = \$3,480.43$

RA_{YR6} (prorated pursuant to Calculation 4, above) = $(\$3,480.43)\times(.88) = \$3,062.78$

Element A_{YR6} (after reduction) = Element A_{YR6} (before reduction) – RA_{YR6} (prorated) = $(\$2,575,000) - (\$3,062.78) = \mathbf{\$2,571,937.22}$

For the purpose of calculating Element A_{YR7} , and only for this purpose, Element $A_{YR6} =$ Element A_{YR6} (before reduction) – AR_{YR6} (before proration) = $(\$2,575,000) - (\$3,480.43) = \mathbf{\$2,571,519.57}$

1.2 Example Service Fee Calculations

1.2.1 Example Calculation 1: Annual Service Fee for Contract Year 2 (ASF_{YR2})

Example Calculation 1 illustrates the Service Fee calculation for Contract Year 2 with the application of the Adjustment Factor.

Assumptions, Inputs and Supporting Calculations

Contract Year 2 = July 1, 2003 through June 30, 2004

Assume $CPI_{JUL\ 2002} = 100$

Assume $CPI_{JUN\ 2003} = 104$

$$AF_{YR2} = \text{Adjustment Factor for Contract Year 2} = 1 + \left(\frac{CPI_{JUN2003} - CPI_{JUL2002}}{CPI_{JUL2002}} \right)$$

$$AF_{YR2} = 1 + \left(\frac{104 - 100}{100} \right) = 1.040$$

$FC_{YR2} = \text{Element } A_{YR2} + \text{Element } B_{YR2}$

Element $A_{YR1} = \$2,321,724$

Element $A_{YR2} = (\text{Element } A_{YR1})(AF_{YR2}) = (\$2,321,724) \times (1.040) = \$2,414,593$

Element $B_{YR2} = \$211,600$ (not subject to escalation)

$RCC_{YR2} = (\$81,500) \times (1.040) = \$84,760$

$RCC_{YR2} = \$84,760$

Assume $EI_{YR2} = \$10,000$ (one-time adjustment to be added to Variable Component)

(Pursuant to subsection 12.4(C)(1) of this Contract, the Variable Component is not to be charged or credited during the first 60 months following the Commencement Date. However, although the Variable Component is therefore not applicable during that 60 month period, the Flow and Loadings Adjustment rates set forth in subsection 12.4(C)(1) of this Contract are to be adjusted annually as if they were to be applied.)

Annual Service Fee Calculation

$ASF_{YR2} = FC + RCC \pm EI = (\text{Element } A_{YR2} + \text{Element } B_{YR2}) + RCC_{YR2} \pm EI_{YR2}$

$ASF_{YR2} = \$2,414,593 + \$211,600 + \$84,760 + \$10,000 = \$2,720,953$

Verify $FC > 80$ percent of Company's total compensation

Company's compensation = $FC + VC = \$2,636,193$

$FC = \$2,626,193$

$\frac{\$2,626,193}{\$2,636,193} \times 100 = 99.62\%$ (OK)

1.2.2 Example Calculation 2: Annual Service Fee for Contract Year 8 (ASF_{YR8})

Example Calculation 2 illustrates the Service Fee for Contract Year 8 under the condition where the Fixed Component is greater than or equal to 80 percent of the Company's total compensation for providing the Management Services.

Assumptions, Inputs and Supporting Calculations

Contract Year 8 = July 1, 2009 through June 30, 2010

Assume $CPI_{JUL\ 2008} = 115$

Assume $CPI_{JUN\ 2009} = 120$

$$AF_{YR8} = 1 + \left(\frac{CPI_{JUN2009} - CPI_{JUL2008}}{CPI_{JUL2008}} \right)$$

$$1 + \left(\frac{120 - 115}{115} \right) = 1.043$$

$$FC_{YR8} = \text{Element } A_{YR8} + \text{Element } B_{YR8}$$

$$\text{Assume Element } A_{YR7} = \$2,700,000$$

$$\text{Element } A_{YR8} = (\text{Element } A_{YR7}) \times (AF_{YR8}) = (\$2,700,000) \times (1.043) = \$2,816,100$$

$$\text{Element } B_{YR8} = \$330,000 \text{ (not subject to escalation)}$$

$$\text{Assume } RCC_{YR7} = \$92,000$$

$$RCC_{YR8} = (\$92,000) \times (1.043) = \$95,956$$

$$RCC_{YR8} = \$95,956$$

$$\text{Assume } EI_{YR8} = \$10,000 \text{ (one-time adjustment to Fixed Component in YR 8)}$$

$$\text{Assume } NRE_{YR8} = \$0$$

$$\text{Determine } FLAE_{YR8}$$

Assume Flow Above Upper Threshold = 100,000,000 gallons

Assume BOD₅ Load Above Upper Threshold = 100,000 pounds

Assume TSS Load Above Upper Threshold = 100,000 pounds

Calculate Flows and Loadings Adjustment rates by multiplying Contract Year 7 rates by the Adjustment Factor for Contract Year 8:

	Assumed Upper Threshold Rate for Contract Year 7	Calculated Upper Threshold Rate for Contract Year 8
Flow (per gallon)	\$0.00030	$(\$0.00030)(1.043) = \0.00031
BOD ₅ Load (per pound)	\$0.160	$(\$0.160)(1.043) = \0.167
TSS Load (per pound)	\$0.190	$(\$0.190)(1.043) = \0.198

$$FLAE_{YR8} = (100,000,000 \text{ gallons}) \times (\$0.00031/\text{gallon}) + (100,000 \text{ lbs}) \times (\$0.167/\text{lb}) + (100,000 \text{ lbs}) \times (\$0.198/\text{lb}) = \$67,500$$

Annual Service Fee Calculation

$$ASF_{YR8} = FC + VC + RCC \pm EI$$

$$= (\text{Element } A_{YR8} + \text{Element } B_{YR8}) + (FLAE_{YR8} + NRE_{YR8}) + RCC_{YR8} \pm EI_{YR8}$$

$$ASF_{YR8} = \$2,816,100 + \$330,000 + \$67,500 + \$0 + \$95,956 + \$10,000$$

$$ASF_{YR8} = \$3,319,556$$

Verify $FC > 80$ percent of Company's total compensation

$$\text{Company's compensation} = FC + VC = \$3,223,600$$

$$FC = \$3,156,100$$

$$\left(\frac{\$3,156,100}{\$3,223,600} \right) \times 100 = 97.9\% \text{ (OK)}$$

1.2.3 Example Calculation 3: Annual Service Fee for Contract Year 11 (ASF_{YR11})

Example Calculation 3 illustrates the Service Fee calculation for Contract Year 11 under the condition where the Fixed Component is less than 80 percent of the Company's total compensation for providing the Management Services.

Assumptions, Inputs and Supporting Calculations

Contract Year 11 = July 1, 2012 through June 30, 2013

Assume CPI_{JUL 2011} = 135

Assume CPI_{JUN 2012} = 140

$$AF_{YR11} = 1 + \left(\frac{CPI_{JUN2012} - CPI_{JUL2011}}{CPI_{JUL2011}} \right)$$

$$1 + \left(\frac{140 - 135}{135} \right) = 1.037$$

FC_{YR11} = Element A_{YR11} + Element B_{YR11}

Assume Element A_{YR9} = \$3,200,000

Element A_{YR11} = (Element A_{YR10})x(AF_{YR11}) =
 (\$3,200,000)x(1.037) = \$3,318,400

Element B_{YR10} = \$330,000 (not subject to escalation)

Assume RCC_{YR10} = \$100,000

RCC_{YR11} = (\$100,000)x(1.037) = \$103,700

RCC_{YR11} = \$103,700

Assume El_{YR110} = \$100,000 (one-time adjustment to Fixed Component in YR 11)

Assume NRE_{YR11} = \$400,000

Determine FLAE_{YR11}

Assume Flow Above Upper Threshold = 800,000,000 gallons

Assume BOD₅ Load Above Upper Threshold = 800,000 pounds

Assume TSS Load Above Upper Threshold = 800,000 pounds

Calculate Flows and Loadings Adjustment rates by multiplying Contract Year 10

rates by the Adjustment Factor for Contract Year 11:

	Assumed Upper Threshold Rate for Contract Year 10	Calculated Upper Threshold Rate for Contract Year 11
Flow (per gallon)	\$0.00035	(\$0.00035)(1.037) = \$0.00036
BOD ₅ Load (per pound)	\$0.190	(\$0.190)(1.037) = \$0.197
TSS Load (per pound)	\$0.210	(\$0.210)(1.037) = \$0.218

$$FLAE_{YR101} = (800,000,000 \text{ gallons}) \times (\$0.00036/\text{gallon}) + (800,000 \text{ lbs}) \times (\$0.197/\text{lb}) + (800,000 \text{ lbs}) \times (\$0.218/\text{lb}) = \$620,000$$

Annual Service Fee Calculation

$$ASF_{YR11} = FC + VC + RCC \pm EI$$

$$ASF_{YR11} = (\text{Element } A_{YR11} + \text{Element } B_{YR11}) + (FLAE_{YR11} + NRE_{YR11}) + RCC_{YR11} \pm EI_{YR11}$$

$$ASF_{YR10} = \$3,318,400 + \$330,000 + \$620,000 + \$400,000 + \$103,700 + \$100,000$$

$$ASF_{YR6} = \$4,872,100$$

Verify $FC > 80$ percent of Company's total compensation

$$\text{Company's compensation} = FC + VC = \$4,768,400$$

$$FC = \$3,748,400$$

$$\left(\frac{\$3,748,400}{\$4,768,400} \right) \times 100 = 78.6\% \text{ (Not OK)}$$

Determine reduction such that $FC = 80$ percent of Company's total compensation

$$\text{Maximum Compensation}_{YR11} = FC_{YR11} / (0.80) = (\$3,748,400) / (0.80) = \$4,685,500$$

$$\text{Reduction} = \text{Actual Compensation}_{YR11} - \text{Maximum Compensation}_{YR11}$$

$$\text{Reduction for Exceedence} = \$4,768,400 - \$4,685,500 = \$82,900$$

Recalculate ASF_{YR11}

$$ASF_{YR11} = \$4,872,100 - \$82,900 = \$4,789,200 \text{ with an eligible carryforward of } \$82,900$$

2.0 COLLECTION SYSTEM FEE CALCULATIONS

As provided in Section 12.2 of the Service Contract, the Collection System Fee for the period January 1, 2003 through June 30, 2003 shall be \$113,226.50. The amount for the Contract Year beginning July 1, 2003 shall be \$226,453 (as adjusted on July 1, 2003 for the Adjustment

Factor). Subsequent Contract Years shall be determined by multiplying (a) the Collection System Fee for the previous Contract Year times (b) the Adjustment Factor.

2.1 Example Calculation: Collection System Fee for Contract Year 2

Assumptions, Inputs and Supporting Calculations

Contract Year 2 = July 1, 2003 through June 30, 2004

Assume $CPI_{JUL\ 2002} = 100$

Assume $CPI_{JUN\ 2003} = 104$

$$AF_{YR2} = \text{Adjustment Factor for Contract Year 2} = 1 + \left(\frac{CPI_{JUN2003} - CPI_{JUL2002}}{CPI_{JUL2002}} \right)$$

$$AF_{YR2} = 1 + \left(\frac{104 - 100}{100} \right) = 1.040$$

$$\text{Collection System Fee}_{YR2} = (\$226,453) \times (1.040) = \$235,511$$